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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

CITY OF SAN DIEGO et al.,

Plaintiff and Respondent,

v.

DANIEL BRUMFIELD et al.,

Defendants and Appellants.

D053444

(Super. Ct. No. MCR 07-094)

APPEAL from a judgment of the Superior Court of San Diego County,

Theodore M. Weathers, Judge. Affirmed.

Daniel and Deanne Brumfield (collectively Brumfields, or individually as Daniel or Deanne)¹ appeal from a decision of the trial court which permanently removed a

¹ We do not intend any disrespect by using the appellants' first names, instead we do so for ease of identification of the participants in the events in this case.

firearm from their possession pursuant to Welfare and Institutions Code² section 8102.

The firearm was seized after an event in which police were called to the Brumfield residence and thereafter took Daniel into custody for mental health evaluation pursuant to section 5150. Viewing the record in the light most favorable to their position, Brumfields contend the police did not have probable cause to detain Daniel and in any event there was not sufficient evidence to establish that he posed a risk of harm to himself or others. We will reject both contentions and affirm.

FACTS AND PROCEDURAL BACKGROUND

This case arises from two calls to the San Diego Police Department, one in the early morning hours of May 28, 2007 and the other in the afternoon of that day. In the first call, police were dispatched to the Brumfield residence because Daniel reported seeing a person standing in his bedroom, although nobody was found there. During his discussions with the police dispatcher, Daniel made a number of strange statements about what he thought he had observed.

During the second call on May 28, Daniel reported that people were locked in his basement, banging on the door and that he had a gun. In one of the discussions Daniel told the dispatcher that if the people got out of the basement there would be a gunfight in the house. When police arrived at the Brumfield residence on the afternoon of the 28th, they took Daniel into custody for a mental health evaluation. Daniel was later transferred

² All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

to a hospital facility where he was held for 10 days. We will set forth a more detailed statement of the facts of this case in the material below, which we take from the respondent's brief with slight modification.

On June 26, 2007, the City of San Diego (City) filed a petition pursuant to section 8102³ seeking to retain the firearm seized on May 28, 2007. After hearing the testimony of two police officers as well as the Brumfields, and reviewing the medical reports, police reports and the transcripts of the 911 calls, the trial court granted the petition.

³ Section 8102 provides, in part: "(a) Whenever a person, who has been detained or apprehended for examination of his or her mental condition or who is a person described in Section 8100 or 8103, is found to own, have in his or her possession or under his or her control, any firearm whatsoever, or any other deadly weapon, the firearm or other deadly weapon shall be confiscated by any law enforcement agency or peace officer, who shall retain custody of the firearm or other deadly weapon. [¶] 'Deadly weapon,' as used in this section, has the meaning prescribed by Section 8100. [¶] (b) Upon confiscation of any firearm or other deadly weapon from a person who has been detained or apprehended for examination of his or her mental condition, the peace officer or law enforcement agency shall notify the person of the procedure for the return of any firearm or other deadly weapon which has been confiscated. [¶] Where the person is released, the professional person in charge of the facility, or his or her designee, shall notify the person of the procedure for the return of any firearm or other deadly weapon which may have been confiscated. [¶] Health facility personnel shall notify the confiscating law enforcement agency upon release of the detained person, and shall make a notation to the effect that the facility provided the required notice to the person regarding the procedure to obtain return of any confiscated firearm. [¶] (c) Upon the release of a person as described in subdivision (b), the confiscating law enforcement agency shall have 30 days to initiate a petition in the superior court for a hearing to determine whether the return of a firearm or other deadly weapon would be likely to result in endangering the person or others, and to send a notice advising the person of his or her right to a hearing on this issue. The law enforcement agency may make an ex parte application stating good cause for an order extending the time to file a petition. Including any extension of time granted in response to an ex parte request, a petition must be filed within 60 days of the release of the person from a health facility."

In the early morning hours of May 28, 2007, Deanne Brumfield called 911 to report Daniel believed a prowler was in their house. Deanne told 911 she herself did not see anybody. Deanne said Daniel thought it was the same black male who had been harassing them since early March. Needing more information, the dispatcher requested to speak with Daniel.

Daniel spoke with 911 and described waking to find a black man standing over his wife's bed. Daniel said the man took his wife pajamas and fashioned a crocodile with a black eye out of them. Daniel said he was "pretty angry at the City" because they want him out of there, and he has been "going on with the stuff" since February. Daniel said he had been dealing with "these people" since February. Daniel said this harassment started in February when a big, overweight black man asked for his wife's social security card. Daniel said he had seen this intruder before, "he wears kind of black clothing" and "sort of a colored scarf around his neck." Daniel described a time in February when this man came into their yard and asked for \$98, and how two nights later there was pounding on their back door. Appellant said there was a "whole thing" where a neighbor's builder had his Mexicans shooting at him with nail guns.

San Diego Police Department officers arrived on scene just before 3:00 a.m. and found no evidence of a prowler inside or outside the house. Officers went into the house to "make sure that they're squared away." Officers also confirmed the area around the house and roads leading to the house "checked negative."

Later that same day, around 3:30 in the afternoon, Daniel called 911 again. He reported there were people in parts of the house banging. Daniel acknowledged the police had been to his house the night before, around 2:00 a.m., he gave his address as 5175 Shawridge Road, and said it was about seven to eight years old; he described the vicinity as being an agricultural area; and he provided dispatch directions from Highway 56. Daniel also confirmed that the address is now Del Mar Mesa Road, not Shawridge.

Interspersed with these perfectly reasonable statements were some nonsensical, rambling statements. Daniel said people were in his house pounding, but did not know how they got in. He said one stood over his wife's bed and offered to fix a computer. He described intruders breaking locks, "He's been banging on the lock. They broke our lock . . . They break their way into the house." Daniel repeated his conspiracy theory, "If you want to know the truth I think the City wants us out of here and they're paying for this and part of the City . . . is the guys that are gonna make a lot of money out of this."

Daniel said he needed officers to "take over his situation." He said there was no way to know how many people were in the house, but stated, "Last night, one man broke in the house . . . and ran out." When the dispatcher questioned whether it was the same situation as the previous night, where they found no evidence of anyone being in the home, Daniel became upset. Daniel insisted there was evidence all over, but one had to look for it. Daniel described "dealing with this goddamn thing for years . . . they're very skilled people and they'll be in your home and you'll hear all these musical things, and . . .

they do it to harass people." Daniel pleaded, "I need officers to come out . . . I want officers to open the doors . . . to the people that are on the other side banging."

The dispatcher requested to speak to Deanne "because you're describing the same situation as last night, and there was no one in your home." Daniel responded, "No, ma'am. Goddamnit. I am not . . . Last night, a guy was standing over her bed and I woke up and I saw him and I woulda killed the son of a bitch if I had a gun. But he, he goes running out of the house then. We found his shoe prints. We found where he went."

The dispatcher questioned whether a real emergency existed, "Unless something has changed . . . from last night, there'd be no reason for us to send someone back out." Daniel threatened he would "have to open those doors . . . and it's gonna be a gun fight inside my house," if officers were not dispatched.

Deanne got on the phone with 911. Having just arrived home from running errands, she could not say whether intruders were present or not. Nonetheless, she confirmed her husband had a gun in his hand.

Staying on the phone with 911, Deanne exited the house to meet officers. She told 911 that Daniel had "a gun in his pocket but it's not a real gun." The dispatcher told Deanne she did not want Daniel coming out of the house waving a gun. The dispatcher asked Deanne to remain outside because they were worried about Daniel inside with weapons.

A police helicopter made an announcement to have Daniel come out unarmed. When Daniel came out of the house, his hands were in his pockets. Officers requested

Daniel to remove his hands from his pockets, but he did not respond to those commands. Officers were concerned he might have a gun in his pocket. When officers contacted Daniel, he struggled with them.

Meanwhile, Brumfields' daughter entered the police perimeter with her unleashed dog. Despite police commands to move back, she continued coming forward. The interference of Brumfields' daughter distracted at least one officer from gaining control of Daniel. The daughter's unleashed dog in close proximity also prevented officers from using their own canine unit to control the situation.

Officers transported Daniel to County Mental Health. Daniel was admitted on a 72-hour hold. He was transferred to Aurora Behavioral Health Care for further evaluation. On May 31, 2007, Daniel was certified as an involuntary patient, and on June 1, 2007, a review hearing was conducted. He was discharged from Aurora Behavioral Health Care on June 7, 2007.

Based on their medical assessments and evaluations, doctors deemed Daniel to be a danger to himself or others. Doctors determined Daniel should not possess firearms and reported him to the California Department of Justice. As a result of his extended hospital stay, Daniel has a lifetime prohibition against possessing firearms.

DISCUSSION

Brumfields essentially challenge the sufficiency of the evidence to support the judgment. They contend police did not have probable cause to detain Daniel for a mental health evaluation and that the evidence is not sufficient to support a finding Daniel posed

a danger to himself or others. We review these challenges under the familiar substantial evidence standard of review. (*People v. Keil* (2008) 161 Cal.App.4th 34, 38.) Under that standard we review the entire record and draw all reasonable inferences in favor of the trial court's decision. We do not make credibility judgments, nor do we reweigh the evidence. We simply decide if there is sufficient substantial evidence from which the trial court could have reached its decision. (*San Diego Metropolitan Transit Development Board v. Handlery Hotel, Inc.* (1999) 73 Cal.App.4th 517, 528.)

A. Probable Cause

In order for police to detain a person under section 5150 for a 72-hour mental examination, they must have probable cause. Probable cause has been defined as: "To constitute probable cause to detain a person pursuant to section 5150, a state of facts must be known to the peace officer (or other authorized person) that would lead a person of ordinary care and prudence to believe, or to entertain a strong suspicion, that the person detained is mentally disordered and is a danger to himself or herself or is gravely disabled. In justifying the particular intrusion, the officer must be able to point to specific articulable facts which, taken together with rational inferences from those facts, reasonably warrant his or her belief or suspicion. [Citations] Each case must be decided on the facts and circumstances presented to the [detaining person] at the time of the detention [citation], and the [detaining person] is justified in taking into account the past conduct, character, and reputation of the detainee. [Citation.]" (*People v Triplett* (1983)

144 Cal.App.3d 283, 287-288; *Heater v. Southwood Psychiatric Care* (1996) 42 Cal.App.4th 1068, 1080.)

Applying the above standards to the facts of this case we are convinced the police officers had probable cause to believe Daniel posed a danger to himself and others when they decided to detain him under section 5150. The officers were aware of the incident the night before when Daniel had reported seeing a black man standing over Deanne's bed. He reported the man had taken Deanne's pajamas and made them into a crocodile with a black eye. Daniel attributed part of the harassment he was experiencing to the City, which wanted him out of his house. Deanne did not see any intruder, the house was securely locked and no signs of an intruder were discovered by police. The officers had learned of the events of the early morning call when they began their shift.

When Daniel made his 911 call in the afternoon of May 28, he made a number of irrational statements. He asserted an emergency because people were locked in his basement and were banging on the door. He needed police help to deal with the people and said there would be a gunfight in the house if he had to deal with the alleged intruders. Daniel was highly agitated and made clear he had a gun.

When police arrived and Daniel was ordered out of the house he was agitated, hostile and irrational. There was no evidence of any intruders as had been the case the night before. The officers could certainly conclude, based on the 911 calls, the previous police visit to the house and Daniel's threats of a gunfight, that he was mentally disturbed

and posed a risk to himself and others. Therefore it was reasonable to detain Daniel under section 5150.

B. Sufficiency of the Evidence

As we have noted, Brumfields present their challenge to the judgment by viewing the evidence in the light most favorable to their position. In doing so, they ignore the fact that the trial judge was not required to accept their versions of the facts and was entitled to make his own credibility judgments. It is clear from the court's comments that he believed the police officers who testified at the hearing. He also apparently accepted the expert evidence, in the form of medical reports that Daniel did suffer from a mental impairment that made him dangerous to himself and others, particularly since Daniel had possessed and threatened to use a firearm during the latest disturbance.

The principal basis for the Brumfields' challenge to the evidence is the argument that he was adversely impacted by the fumes from the bug bombs he had set off on the day of his detention. The Brumfields posit that he suffered a toxic reaction to the fumes, and thus his conduct was merely situational and he does not present any risk of danger. As we have noted, the court was not obliged to accept that evidence as persuasive. Further, there was no evidence that "bug bombs" influenced Daniel's behavior on the early morning visit by police. On that occasion he was agitated, hostile, and was observing a person who apparently did not exist. His report regarding the person taking his wife's pajamas and fashioning them into a black-eyed crocodile, could certainly cause

one to believe Daniel suffered from some form of mental impairment unrelated to aerosol sprays.

In short, given the trial court's apparent acceptance of the City's evidence which included expert reports, police observations and Daniel's comments on the several 911 tapes, that evidence is clearly sufficient substantial evidence to support the court's findings.

DISPOSITION

The judgment is affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

O'ROURKE, J.

AARON, J.